

Notice of Allowability

Application No.

10/685,767

Examiner

Annette R. Reimers

Applicant(s)

MUJWID ET AL.

Art Unit

3733

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to correspondence filed on April 3, 2006.
2. ☒ The allowed claim(s) is/are 1-7,9,11-15,17-19 and 21-25.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413), Paper No./Mail Date _____
7. ☐ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____


EDUARDO C. ROBERT
SUPERVISORY PATENT EXAMINER

REASONS FOR ALLOWANCE

The following is an examiner's statement of reasons for allowance:

The claims in the instant application have not been rejected using prior art because no references, or reasonable combination thereof, could be found which disclose, or suggest an expandable intervertebral implant, the implant comprising: an internal member including an internal base wall, first and second internal walls that extend from the internal base wall along a length of the base wall, wherein the first and second internal walls each have a free end and an attached end, the attached end connected to the base wall and the free end extending from the base wall in a generally perpendicular orientation; a flexible region in the internal member defined by a pair of slots formed adjacent to the attached ends of the first and second internal walls and extending along the length of the internal member base wall, wherein the flexible region provides for lateral displacement of the free ends of the first and second internal walls, as set forth in claim 1.

The claims in the instant application have not been rejected using prior art because no references, or reasonable combination thereof, could be found which disclose, or suggest an expandable intervertebral implant, the implant comprising: an internal member, wherein the internal member includes an arcuate slot positioned adjacent to an attached end of the first wall and extending from the first end to the second end of the internal member to form a flexible region within the internal member

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permitting flexure of a free end of the first and second walls of the internal member with respect to the base of the internal member, as set forth in claim 2.

The claims in the instant application have not been rejected using prior art because no references, or reasonable combination thereof, could be found which disclose, or suggest an expandable intervertebral implant, the implant comprising: an internal member including an internal base wall, and first and second internal walls extending from the internal base wall along a length of the base wall; wherein the first and second internal walls each have a free end and an attached end, the attached end connected to the internal base wall and the free end extending from the base wall in a generally perpendicular orientation, a flexible region in the internal member defined by a pair of slots formed adjacent to the attached ends of the first and second internal walls and extending along the length of the internal member base wall, wherein the flexible region provides for lateral displacement of the free ends of the first and second internal walls, as set forth in claim 12.

The claims in the instant application have not been rejected using prior art because no references, or reasonable combination thereof, could be found which disclose, or suggest an expandable intervertebral implant, the implant comprising: a second member having a second base portion, walls extending from the second base portion along a length of the second member base wall, and arcuate slots positioned adjacent the walls extending along the length of the second member, the arcuate slots defining a flexible region between each of the walls and the second base portion, as set forth in claim 17.

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Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Annette R. Reimers whose telephone number is (571) 272-7135. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on (571) 272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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EDUARDO C. ROBERT
SUPERVISORY PATENT EXAMINER